IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 14597 of 2004

For Approval and Signature:

HON'BLE MR.JUSTICE M.R. SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

RAMANLAL MANILAL SHAH

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 14597 of 2004

HL PATEL ADVOCATES for Petitioner No. 1

Mr.P.R.Abichandani, learned A.G.P. for Respondent No. 1-2

CORAM : HON'BLE MR.JUSTICE M.R. SHAH

Date of decision: 27/01/2005

ORAL JUDGEMENT

#. Rule. Mr. P.R.Abichandani waives service of rule on behalf of the respondent nos. 1 and 2. With the consent

of the learned advocates for the respective parties, the matter is taken up for final hearing today.

#. In this petition filed under Article 226/227 of the Constitution of India, the petitioner has challenged the legality and validity of the order passed by the Secretary (Appeals) Revenue Department, State of Gujarat dated 02.08.2004 / 22.09.2004 in Revision Application No. 9 of 2004 in dismissing the same and confirming the order passed by the Collector, Mahesana dated 11.12.2003 by which the Collector, Mahesana has set aside the entry no. 1676 as well as entry no. 8835 with respect to the land in question.

#. It is the case of the petitioner that the name of the petitioner came to be entered into the record of right with respect to the land bearing survey number 459/2 of village Udalpur along with the co-owners. It is also the case of the petitioner that thereafter the petitioner has purchased another land bearing survey no. 2192 situated at village Kada, Taluka Visnagar by registered Sale Deed on the basis of the aforesaid entry as agriculturist and necessary entry being entry no. 8835 is also mutated in the record of rights on 08.06.2001. It appears from the record that the aforesaid two entries came to be taken in suo motu review / revision by the Collector, Mahesana under Rule 108(6) of the Bombay Land Revenue Rules (`the Rules' for short) and having found that entry no. 1676 by which the name of the petitioner was entered into in the record of rights as co-owners along with other heirs itself was illegal and also having found that the purchase of the land bearing survey no. 2192 situated at Kada on the basis of the aforesaid entry itself is in breach of the provisions of law as the petitioner has purchased the said land at Kada considering himself as agriculturist only on the basis of the aforesaid entry no. 1676 which is not permissible and therefore the Collector, Mahesana by its order dated 02.12.2003 set aside both the entries i.e. entry no. 1676 with respect to the land situated at Udalpur and also the entry no. 8835 in respect of the land situated at Kada Taluka Visnagar. Being aggrieved and dissatisfied with the same, the petitioner preferred Revision Application No. 9 of 2004 before the Secretary (Appeals), Revenue Department which also came to be dismissed by the Secretary (Appeals) by its judgment and order dated 02.08.2004 / 22.09.2004 and hence the present petition under Article 226 / 227 of the Constitution of India.

#. Mr.Patel, learned advocate appearing for the petitioner has relied upon the judgment of this court in

the case of Evergreen Apartment Co-operative Housing Society V/s Special Secretary, Revenue Department, Gujarat State reported in 1991(1) G.L.R. 113 and the decision in the case of Janardhan D Patel V/s State of Gujarat reported in 1997 (1) G.L.R. 50 and has submitted that the revenue authority while exercising the powers under the provisions of Code / Rules would not examine the provisions of other enactments even though the very officer may be holding the power under other enactments and therefore it is submitted that the order passed by the Collector, Mahesana confirmed by the Secretary (Appeals) with regard to the quashing and setting aside the aforesaid entries are contrary to the aforesaid two judgments and requested to allow the petition.

#. On the other hand, Mr.P.R.Abichandani, learned A.G.P. has relied upon the subsequent judgment of the learned single Judge of this court in the case of Jayantilal Jethalal Soni V/s State of Gujarat rendered in Special Civil Application No. 12547 of 2004 dated 28.09.2004 (Coram : Jayant Patel, J) and has submitted that the authority under the Code is well within its jurisdiction and right to come to the conclusion that at the time of mutating entry, there would be breach of other enactment. He has relied upon para 8 of the aforesaid judgment in support of his aforesaid contention.

#. Heard the learned advocates for the parties.

#. The learned single Judge of this Court in the recent judgment in the case of Jayantilal Jethalal Soni (supra), considering the aforesaid two judgments i.e. judgment of Evergreen Apartment Cooperative Housing Society Ltd. (supra) and Janardhan D Patel (supra), in para 8 of the judgment has held as under :

> "8. Therefore, keeping in view of the aforesaid observations made by this Court in the above referred judgment, it appears that it would not be proper to hold that even if there are breaches under other enactment or such transfer is barred under the other enactment, the revenue authorities exercising power under Code could have ignored the same for the purpose of recording the mutation. At the same time, the authorities exercising power under the Code will have to exercise the jurisdiction within the limits of the statutory provisions of the Code. Therefore, on reconciling of both the aspects, it appears that in a case where the transfer of a land is made by registered sale deed and if the

revenue authority prima facie is of the view that such transfer is either barred under the other enactment or is resulting into a breach of other enactment or is to result into adversely affecting the rights under the other enactment and consequently sale is prohibited, then in that case, the appropriate course for the revenue authority would be to record the entry for registered sale deed with the express observations that the registered sale deed is prima facie in breach of the other enactment and simultaneously refer the matter to the competent authority under the other concerned enactment of which breach is committed and the entry should be made subject to the final decision which may be taken by the competent authority under the other concerned enactment. This court is inclined to take such view, because the one, who may be a bonafide purchaser or one who is interested to purchase the property would normally rely upon the revenue entry for enquiring into the title and the possession of the property. If the entry is certified on the basis of registered sale deed as it is, without recording for aforesaid qualification or clarification, the resultant effect would be that it will not be made known to the either person interested or to the other party who may act upon the revenue entry that the present transaction may be in breach of the other enactment and consequently it may result into not giving correct picture of the title or possession of the property in question in accordance with law. If the entry, on the basis of the sale deed is not at all effected, with the aforesaid qualification or without aforesaid qualification, it may also conversely mislead the public at large and also to those persons who act upon the revenue record, because there will be no recording of such transactions of registered sale deed which has the effect of conferring the right on property unless it is prohibited by the relevant statute under the other enactment or unless such sale deed is declared as null and void by the competent authority or through the process known to law. Therefore, it cannot be said that the authority exercising power under the Land Revenue Code has absolutely no jurisdiction to even prima facie consider the matter as to whether the breach of the other enactment is committed or not. At the most, it can be said that the authority exercising power

under the code has no power to conclude as to whether the breach of the other enactment by the impugned transfer or registered sale deed is made or not."

#. Considering the judgment of this court in the case of Evergreen Apartment Cooperative Housing Society Ltd. (supra) and Janardhan D Patel (supra) and the judgment in the case of Jayantilal Jethalal Soni (supra), the order passed by the Collector, Mahesana dated 02.12.2003 / 11.12.2003 as well as the order passed by the Secretary (Appeals), Revenue Department, State of Gujarat dated 02.08.2004 / 22.09.2004 passed in Revision Application no. 9 of 2004 is modified and it is ordered that the entry no. 1676 in respect of the land in question situated at village Udalpur and also entry no. 8835 in respect of the land situated at Kada Taluka Visnagar in respect of the land bearing survey no. 2192 would be subject to the outcome of the proceedings to be initiated by the competent authority for breach of any other law with regard to the aforesaid two transactions. The competent authority is not precluded from initiating the proceedings with regard to the transaction in question i.e. with regard to entry no. 1676 as well as entry no. 8835 in accordance with law and on merits and as stated above, the aforesaid two entries would be subject to the ultimate outcome of the proceedings to be initiated under the Code. The revenue authority is also directed to make additional entry in village form to the effect that the aforesaid two entries i.e. entry no. 1676 and 8835 is subject to the ultimate outcome of the proceedings to be initiated by the competent authority for breach of other law.

#. In view of the above, this petition is allowed. Rule is made absolute to the aforesaid extent with no order as to costs.

(M.R.Shah,J)

(pathan)